

Request for Proposals

Solicitation Number F09658-90-R-0207
West Robins Housing Privatization Project, UHHZ 974012

APPENDIX E: FORM DOCUMENTS FOR GOVERNMENT DIRECT LOAN

**APPENDIX E-1: FREDDIE MAC FORM DIRECT NOTE, PLUS MILITARY HOUSING
RIDER TO DIRECT NOTE**

MULTIFAMILY NOTE
(MULTISTATE)
(DoD Direct Loan)

US \$ _____, _____

FOR VALUE RECEIVED, the undersigned ("**Borrower**") jointly and severally (if more than one) promises to pay to the order of _____, a _____, the principal sum of _____ Dollars (US \$ _____), with interest on the unpaid principal balance at the annual rate of _____ percent (____%).

1. Defined Terms. As used in this Note, (i) the term "**Lender**" means the holder of this Note, and (ii) the term "**Indebtedness**" means the principal of, interest on, or any other amounts due at any time under, this Note, the Security Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument under Section 12 of the Security Instrument. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. Address for Payment. All payments due under this Note shall be payable at _____, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. Payment of Principal and Interest. Principal and interest shall be paid as follows:

(a) Unless disbursement of principal is made by Lender to Borrower on the first day of the month, interest for the period beginning on the date of disbursement and ending on and including the last day of the month in which such disbursement is made shall be payable simultaneously with the execution of this Note. Interest under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

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(b) Consecutive monthly installments of principal and interest, each in the amount of

Dollars (US \$ _____), shall be payable on the first day of each month beginning on _____, _____, until the entire unpaid principal balance evidenced by this Note is fully paid. Any accrued interest remaining past due for 30 days or more shall be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any remaining principal and interest shall be due and payable on _____ or on any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise (the "**Maturity Date**"). The unpaid principal balance shall continue to bear interest after the Maturity Date at the Default Rate set forth in this Note until and including the date on which it is paid in full.

(c) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured, among other things, by a multifamily mortgage, deed to secure debt or deed of trust dated as of the date of this Note (the "**Security Instrument**"), and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. Acceleration. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Paragraph 10, if any, and all other amounts payable under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower. Lender may exercise this option to accelerate regardless of any prior forbearance.

7. Late Charge. If any monthly amount payable under this Note or under the Security Instrument or any other Loan Document is not received by Lender within _____ days

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after the amount is due, Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to _____ percent of such amount. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note (the "**Loan**"), and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Paragraph 8.

8. Default Rate. So long as (a) any monthly installment under this Note remains past due for 30 days or more, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "**Default Rate**") equal to the lesser of 4 percentage points above the rate stated in the first paragraph of this Note or the maximum interest rate which may be collected from Borrower under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any monthly installment under this Note is delinquent for more than 30 days, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for more than 30 days or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Paragraph 9, Borrower shall have no personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the

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performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to _____ percent (____%) of the _____ principal balance of this Note, plus any other amounts for which Borrower has personal liability under this Paragraph 9.

(c) In addition to Borrower's personal liability under Paragraph 9(b), Borrower shall be personally liable to Lender for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; or (3) failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(d) For purposes of determining Borrower's personal liability under Paragraph 9(b) and Paragraph 9(c), all payments made by Borrower or any guarantor of this Note with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(e) Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower's acquisition of any property or operation of any business not permitted by Section 33 of the Security Instrument; (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(f) In addition to any personal liability for the Indebtedness, Borrower shall be personally liable to Lender for (1) the performance of all of Borrower's obligations under Section

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18 of the Security Instrument (relating to environmental matters); (2) the costs of any audit under Section 14(d) of the Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Paragraph 9, including fees and out of pocket expenses of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(g) To the extent that Borrower has personal liability under this Paragraph 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. For purposes of this Paragraph 9, the term "**Mortgaged Property**" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding.

10. Voluntary and Involuntary Prepayments.

(a) A prepayment premium shall be payable in connection with any prepayment made under this Note as provided below:

(1) Borrower may voluntarily prepay all of the unpaid principal balance of this Note on the last Business Day of a calendar month if Borrower has given Lender at least 30 days prior notice of its intention to make such prepayment. Such prepayment shall be made by paying (A) the amount of principal being prepaid, (B) all accrued interest, (C) all other sums due Lender at the time of such prepayment, and (D) the prepayment premium calculated pursuant to Schedule A. For all purposes including the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of the month shall be deemed to have been received on the last calendar day of such month. For purposes of this Note, a "**Business Day**" means any day other than a Saturday, Sunday or any other day on which Lender is not open for business. Borrower shall not have the option to voluntarily prepay less than all of the unpaid principal balance.

(2) Upon Lender's exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (A) all accrued interest and all other sums due Lender, and (B) the prepayment premium calculated pursuant to Schedule A.

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(3) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note prior to the Maturity Date and in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium. The amount of any such partial prepayment shall be computed so as to provide to Lender a prepayment premium computed pursuant to Schedule A without Borrower having to pay out-of-pocket any additional amounts.

(b) Notwithstanding the provisions of Paragraph 10(a), no prepayment premium shall be payable with respect to (A) any prepayment made no more than ___ days before the Maturity Date, or (B) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(c) Schedule A is hereby incorporated by reference into this Note.

(d) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(e) Borrower recognizes that any prepayment of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from a default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth on Schedule A represents a reasonable estimate of the damages Lender will incur because of a prepayment.

(f) Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

11. Costs and Expenses. Borrower shall pay all expenses and costs, including fees and out-of-pocket expenses of attorneys and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding

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(including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

14. Loan Charges. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

15. Commercial Purpose. Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family or household purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

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17. Governing Law. This Note shall be governed by the law of the jurisdiction in which the Land is located.

18. Captions. The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the jurisdiction in which the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED SCHEDULES. The following Schedules are attached to this Note:

☒ **Schedule A Prepayment Premium (required)**

☐ **Schedule B Modifications to Multifamily Note**

IN WITNESS WHEREOF, Borrower has signed and delivered this Note or has caused this Note to be signed and delivered by its duly authorized representative.

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[SIGNATURES]

Borrower's Social Security/Employer ID Number

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SCHEDULE A

PREPAYMENT PREMIUM

[INTENTIONALLY DELETED]

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SCHEDULE B

MODIFICATIONS TO MULTIFAMILY NOTE

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Robins, AFB

MILITARY HOUSING RIDER TO NOTE (DoD Direct Loan)

This Rider is attached to and incorporated into the foregoing Multifamily Note (the "Note") dated _____, 199__ from the undersigned (the "Borrower") to the Secretary of the Air Force (the "Lender"), and this Rider amends, modifies and supplements the Note.

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1. **Definitions.**

Capitalized terms which are not defined below in Section 1 of this Rider or elsewhere in the body of this Rider shall have the meanings set forth in the Note.

"Guaranteed Lender" means **[NAME OF GUARANTEED LENDER]** and its successors and permitted assigns.

"Guaranteed Mortgage" means that certain Multifamily Deed to Secure Debt (DoD Guaranteed Loan) dated _____, 199__, including all riders and addenda, from the Borrower to the Guaranteed Lender to secure the repayment of the Guaranteed Note, as amended or modified in accordance with its terms, which Guaranteed Mortgage is to be recorded in the Land Records of Houston County, Georgia prior to the recordation of the Security Instrument.

"Guaranteed Note" means that certain Multifamily Note (DoD Guaranteed Loan) in the principal amount of \$_____ dated _____, 199__, including all riders and addenda, from the Borrower to the Guaranteed Lender, as amended or modified in accordance with its terms.

"Intercreditor Agreement" means the Intercreditor Agreement by and between the Lender and the Guaranteed Lender, as the same may be amended or modified pursuant to its terms.

"Project" means a privately-owned rental housing development to be developed by the Borrower primarily for use by military personnel and their families assigned to Robins AFB, San Warner Robins, Georgia.

"Use Agreement" means one or more Declarations of Restrictive Covenants and Use Agreements For Military Housing executed by Borrower with respect to the Project.

2. **Approval of and Subordination to Guaranteed Note and Mortgage.**

a. Notwithstanding the provisions of Section 16 or any other provisions of the Security Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Guaranteed Note and the Guaranteed Mortgage. Lender further acknowledges and agrees that its rights and remedies under the Note and the Security Instrument are subordinate and subject to the rights of the Guaranteed Lender under the Guaranteed Note and Guaranteed Mortgage in accordance with the Intercreditor Agreement.

b. The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Guaranteed Note and the Guaranteed Mortgage, including specifically, but without limitation, to pay all sums due under the Guaranteed Note and the Guaranteed Mortgage as and when due. The Borrower furthers agrees that any and all defaults under the Guaranteed Note and the

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Guaranteed Mortgage shall constitute and be defaults under the Security Instrument entitling the holder to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

3. **Prepayment.** Notwithstanding anything in the foregoing Note to the contrary, the indebtedness evidenced by the Note may be prepaid in whole or in part at anytime without prepayment penalty or premium.

4. **Performance Under the Use Agreement.** The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Use Agreement. The Borrower further agrees that any and all defaults under the Use Agreement shall constitute and be defaults under the Note entitling the Lender to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

5. **Conflicts With Intercreditor Agreement.** The terms of the Intercreditor Agreement, the Note and the Security Instrument are intended to be consistent and should be so construed. However, any conflict between the terms of the Intercreditor Agreement, and the Note and the Security Instrument shall be resolved in the following descending order of precedence:

- i. The Intercreditor Agreement.
- ii. The Note and the Security Instrument.

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BORROWER:

By: _____
Name: _____
Title: _____

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**APPENDIX E-2: FREDDIE MAC FORM DIRECT SECURITY INSTRUMENT (DEED
TO SECURE DEBT), PLUS MILITARY HOUSING RIDER TO
DIRECT SECURITY INSTRUMENT**

Prepared by, and after recording
return to:

**MULTIFAMILY DEED TO SECURE DEBT,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

(GEORGIA)

(DoD Direct Loan)

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MULTIFAMILY DEED TO SECURE DEBT, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MULTIFAMILY DEED TO SECURE DEBT, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the “**Instrument**”) is made as of the ____ day of _____, _____, between _____, a _____ organized and existing under the laws of _____, whose address is _____, as grantor (“**Borrower**”), and _____, a _____ organized and existing under the laws of _____, whose address is _____, as grantee (“**Lender**”).

Borrower is indebted to Lender in the principal amount of _____ and ____/100 Dollars (\$_____), as evidenced by Borrower’s Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on _____.

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower grants, conveys and assigns to Lender and Lender’s successors and assigns, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of Georgia and described in Exhibit A attached to this Instrument. To have and to hold the Mortgaged Property unto Lender and Lender’s successors and assigns forever. As used in this Instrument, the term “Mortgaged Property” is synonymous with the term “Secured Property,” and the term “lien” is synonymous with the term “security interest and title.”

Borrower covenants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, that the Mortgaged Property is unencumbered, and that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property.

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Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS1. DEFINITIONS1. DEFINITIONS1.

DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

- (a) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.
- (b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.
- (c) **"Controlling Entity"** means an entity which owns, directly or indirectly through one or more intermediaries, (A) a general partnership interest or more than 50% of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (B) a manager's interest in Borrower or more than 50% of the ownership or membership interests in Borrower (if Borrower is a limited liability company), or (C) more than 50% of any class of voting stock of Borrower (if Borrower is a corporation).
- (d) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.
- (e) **"Event of Default"** means the occurrence of any event listed in Section 22.
- (f) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors;

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pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(g) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(h) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(i) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

(j) **"Impositions"** and **"Imposition Deposits"** are defined in Section 7(a).

(k) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(l) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.

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(m) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.

(n) **"Land"** means the land described in Exhibit A.

(o) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(p) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(q) **"Loan Documents"** means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(r) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.

(s) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements,

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rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;

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- (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
 - (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
 - (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(t) **"Note"** means the Multifamily Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(u) **"O&M Program"** is defined in Section 18(a).

(v) **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(w) **"Property Jurisdiction"** is defined in Section 30(a).

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

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(z) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT2.

UNIFORM COMMERCIAL CODE SECURITY AGREEMENT2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower shall execute and deliver to Lender, upon Lender's request, financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION3. ASSIGNMENT OF RENTS; APPOINTMENT OF

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RECEIVER; LENDER IN POSSESSION³. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be

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obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of

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the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it

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is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

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(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument; (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM5.

PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION6. EXCULPATION6. EXCULPATION6.

EXCULPATION. Borrower's personal liability for payment of the Indebtedness and for

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performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender, plus one-sixth of such estimate. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the **"Imposition Deposits"**. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as **"Impositions"**. The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall

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not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary plus one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS8. COLLATERAL AGREEMENTS8. COLLATERAL AGREEMENTS. Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS9. APPLICATION OF PAYMENTS9. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

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10. COMPLIANCE WITH LAWS10. COMPLIANCE WITH LAWS10.

COMPLIANCE WITH LAWS10. COMPLIANCE WITH LAWS. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. USE OF PROPERTY11. USE OF PROPERTY11. USE OF PROPERTY11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER'S SECURITY12. PROTECTION OF LENDER'S SECURITY12. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

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(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION13. INSPECTION13. INSPECTION13.

INSPECTION. Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

14. BOOKS AND RECORDS; FINANCIAL REPORTING14. BOOKS AND RECORDS; FINANCIAL REPORTING14. BOOKS AND RECORDS; FINANCIAL REPORTING14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) Borrower shall furnish to Lender all of the following:

- (1) within 120 days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space

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occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;

- (3) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;
- (5) upon Lender's request, quarterly income and expense statements for the Mortgaged Property;
- (6) upon Lender's request at any time when an Event of Default has occurred and is continuing, monthly income and expense statements for the Mortgaged Property;
- (7) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (8) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender may reasonably require. Lender also may

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require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES15. TAXES; OPERATING EXPENSES15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

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(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

16. LIENS; ENCUMBRANCES16. LIENS; ENCUMBRANCES16. LIENS; ENCUMBRANCES16. LIENS; ENCUMBRANCES. Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default and subjects Borrower to personal liability under the Note.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY17.

PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, and (f) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or

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other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

18. ENVIRONMENTAL HAZARDS18. ENVIRONMENTAL HAZARDS18. ENVIRONMENTAL HAZARDS18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "**O&M Program**") or matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the

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foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials.

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Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 18 becomes untrue after the date of this Agreement.

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Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse

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Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (1) any breach of any representation or warranty of Borrower in this Section 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;
- (3) the existence or alleged existence of any Prohibited Activity or Condition;
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written

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release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive notice of or consideration for any of the following:

- (1) any amendment or modification of any Loan Document;
- (2) any extensions of time for performance required by any Loan Document;
- (3) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;
- (4) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document;
- (5) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (6) the release or substitution in whole or in part of any security for the Indebtedness; and
- (7) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(n) Borrower shall, at its own cost and expense, do all of the following:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnatee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and

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- (3) reimburse Indemnitees for any and all expenses, including fees and out of pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnatee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnatee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

19. PROPERTY AND LIABILITY INSURANCE

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

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(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

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(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION20. CONDEMNATION20. CONDEMNATION20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or

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change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [NO RIGHT TO TRANSFER]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [NO RIGHT TO TRANSFER]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [NO RIGHT TO TRANSFER]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [NO RIGHT TO TRANSFER]

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the

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trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and

- (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (6) above.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender may consent, in its discretion, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

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- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the Mortgaged Property and the transferee meet all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender to the approval of borrowers and properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (3) the absence of any Event of Default;
- (4) the execution of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender; and
- (5) Lender's receipt of all of the following:
 - (A) a review fee in the amount of \$_____;
 - (B) a transfer fee in an amount equal to _____% of the unpaid principal balance of the Indebtedness immediately before the Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL]**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL]****21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL]****21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL]**

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(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and
- (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (6) above.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

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(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, *one time only* and without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of

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the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;

- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) the loan to value ratio at the time of the proposed Transfer is 70% or less ("loan to value ratio" means the ratio of (A) the outstanding principal balance of the Indebtedness to (B) the value of the Mortgaged Property, as determined by Lender, expressed as a percentage);
- (6) the debt service coverage ratio for the last twelve full months preceding the proposed Transfer was 1.35 or more ("debt service coverage ratio" means the ratio of (A) the annual net operating income from the Mortgaged Property's operations during that month which is available for repayment of debt, after deducting operating expenses, to (B) the annual principal and interest payable under the Note); and
- (7) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, and (B) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;
- (8) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
- (9) Lender's receipt of all of the following:

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- (A) a review fee in the amount of \$_____;
- (B) a transfer fee in an amount equal to _____% of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
- (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL]21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL]

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;

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- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
 - (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and
 - (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (6) above.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower

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pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and

- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;
- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, and (B) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the transferee causes one

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or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;

- (6) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
- (7) Lender's receipt of all of the following:
 - (A) a review fee in the amount of \$_____;
 - (B) a transfer fee in an amount equal to _____% of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

22. EVENTS OF DEFAULT22.EVENTS OF DEFAULT22.EVENTS OF
DEFAULT22. EVENTS OF DEFAULT22.EVENTS OF DEFAULT22.EVENTS OF
DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;
- (b) any failure by Borrower to maintain the insurance coverage required by Section 19;
- (c) any failure by Borrower to comply with the provisions of Section 33;
- (d) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners or managers or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

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(e) any Event of Default under Section 21;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower. However, no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(h) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(i) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable; and

(j) Borrower voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within 60 days after filing.

23. REMEDIES CUMULATIVE23. REMEDIES CUMULATIVE23. REMEDIES CUMULATIVE23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE24.FORBEARANCE24.FORBEARANCE24. FORBEARANCE.

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(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES25. LOAN CHARGES25. LOAN CHARGES25. LOAN CHARGES25. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

26. WAIVER OF STATUTE OF LIMITATIONS26. WAIVER OF STATUTE OF LIMITATIONS26. WAIVER OF STATUTE OF LIMITATIONS26. WAIVER OF STATUTE OF LIMITATIONS26. WAIVER OF STATUTE OF LIMITATIONS

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STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

27. WAIVER OF MARSHALLING27. WAIVER OF MARSHALLING27. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. FURTHER ASSURANCES28. FURTHER ASSURANCES28. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

29. ESTOPPEL CERTIFICATE29. ESTOPPEL CERTIFICATE29. ESTOPPEL CERTIFICATE. Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

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**30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE30.
GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE30.
GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE30.
GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE31. NOTICE31. NOTICE31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

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(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER**32. SALE OF NOTE; CHANGE IN SERVICER****32. SALE OF NOTE; CHANGE IN SERVICER**. The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

33. SINGLE ASSET BORROWER**33. SINGLE ASSET BORROWER****33. SINGLE ASSET BORROWER**. Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. SUCCESSORS AND ASSIGNS BOUND**34. SUCCESSORS AND ASSIGNS BOUND****34. SUCCESSORS AND ASSIGNS BOUND**. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY**35. JOINT AND SEVERAL LIABILITY****35. JOINT AND SEVERAL LIABILITY**. If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY**36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY****36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY**.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

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(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; AMENDMENTS.37. SEVERABILITY; AMENDMENTS.37. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

38. CONSTRUCTION38. CONSTRUCTION38. CONSTRUCTION. The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

39. LOAN SERVICING39. LOAN SERVICING39. LOAN SERVICING39. LOAN SERVICING. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

40. DISCLOSURE OF INFORMATION40. DISCLOSURE OF INFORMATION40. DISCLOSURE OF INFORMATION40. DISCLOSURE OF

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INFORMATION. Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION. If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

43. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale granted in this Instrument (and Borrower appoints Lender as Borrower's agent and attorney-in-fact to exercise such power of sale in the name and on behalf of Borrower) and any other remedies permitted by Georgia law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

Lender may sell and dispose of the Mortgaged Property at public auction, at the usual place for conducting sales at the courthouse in the county where all or any part of the Mortgaged Property is located, to the highest bidder for cash, first advertising the time, terms and place of

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such sale by publishing a notice of sale once a week for four consecutive weeks (without regard to the actual number of days) in a newspaper in which sheriff's advertisements are published in such county, all other notice being waived by Borrower; and Lender may thereupon execute and deliver to the purchaser a sufficient instrument of conveyance of the Mortgaged Property in fee simple, which may contain recitals as to the happening of the default upon which the execution of the power of sale granted by this Section depends. The recitals in the instrument of conveyance shall be presumptive evidence that Lender duly complied with all preliminary acts prerequisite to the sale and instrument of conveyance. Borrower constitutes and appoints Lender as Borrower's agent and attorney-in-fact to make such recitals, sale and conveyance. Borrower ratifies all of Lender's acts, as such attorney-in-fact, and Borrower agrees that such recitals shall be binding and conclusive upon Borrower and that the conveyance to be made by Lender (and in the event of a deed in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title and interest, equity of redemption, including all statutory redemption, homestead, dower, curtesy and all other exemptions of Borrower, or its successors in interest, in and to the Mortgaged Property.

The Mortgaged Property may be sold in one parcel and as an entirety, or in such parcels, manner or order as Lender, in its discretion, may elect, and one or more exercises of the powers granted in this Section shall not extinguish or exhaust the power unless the entire Mortgaged Property is sold or the Indebtedness is paid in full, and Lender shall collect the proceeds of such sale, applying such proceeds as provided in this Section. In the event of a deficiency, Borrower shall immediately on demand from Lender pay such deficiency to Lender, subject to the provisions of the Note limiting Borrower's personal liability for payment of the Indebtedness. Borrower acknowledges that Lender may bid for and purchase the Mortgaged Property at any foreclosure sale and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price. Borrower covenants and agrees that Lender shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess. The power and agency granted in this Section 43 are coupled with an interest, are irrevocable by death or otherwise and are in addition to the remedies for collection of the Indebtedness as provided by law.

If the Mortgaged Property is sold pursuant to this Section 43, Borrower, or any person holding possession of the Mortgaged Property through Borrower, shall surrender possession of the Mortgaged Property to the purchaser at such sale on demand. If possession is not surrendered on demand, Borrower or such person shall be a tenant holding over and may be dispossessed in accordance with Georgia law.

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44. RELEASE. Upon payment of the Indebtedness, Lender shall cancel this Instrument. Borrower shall pay Lender's reasonable costs incurred in canceling this Instrument.

45. BORROWER'S WAIVER OF CERTAIN RIGHTS. To the fullest extent permitted by law, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any present or future law providing for any appraisalment, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshalling or forbearance, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the fullest extent permitted by law, waives and releases all rights of redemption, valuation, appraisalment, stay of execution, reinstatement (including all rights under O.C.G.A. Section 44-14-85), notice of intention to mature or declare due the whole of the Indebtedness, and all rights to a marshaling of assets of Borrower, including the Mortgaged Property.

46. DEED TO SECURE DEBT. This conveyance is to be construed under the existing laws of the State of Georgia as a deed passing title, and not as a mortgage, and is intended to secure the payment of the Indebtedness.

47. ASSUMPTION NOT A NOVATION. Lender's acceptance of an assumption of the obligations of this Instrument and the Note, and the release of Borrower pursuant to Section 21, shall not constitute a novation and shall not affect the priority of the lien created by this Instrument.

48. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land (required).
<input type="checkbox"/>	Exhibit B	Modifications to Instrument

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IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

[SIGNATURES AND ACKNOWLEDGMENTS]

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EXHIBIT A

[DESCRIPTION OF THE LAND]

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EXHIBIT B

MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

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Robins, AFB

MILITARY HOUSING RIDER TO SECURITY INSTRUMENT (DoD Direct Loan)

This Rider is attached to and incorporated into the foregoing Multifamily Deed to Secure Debt (the "Instrument") dated _____, 199__ from the undersigned (the "Borrower") to the Secretary of the Air Force (the "Lender"), and this Rider amends, modifies and supplements the Instrument.

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1. Definitions.

a. Capitalized terms which are not defined below in Section 1 of this Rider or elsewhere in the body of this Rider shall have the meanings set forth in the Instrument.

"Guaranteed Lender" means [NAME OF GUARANTEED LENDER] and its successors and permitted assigns.

"Guaranteed Mortgage" means that certain Multifamily Deed to Secure Debt (DoD Guaranteed Loan) dated _____, 199__, including all riders and addenda, from the Borrower to the Guaranteed Lender to secure the repayment of the Guaranteed Note, as amended or modified in accordance with its terms, which Guaranteed Mortgage is to be recorded in the Land Records of Houston County, Georgia prior to the recordation of the Instrument.

"Guaranteed Note" means that certain Multifamily Note (DoD Guaranteed Loan) in the principal amount of \$_____ dated _____, 199__, including all riders and addenda, from the Borrower to the Guaranteed Lender, as amended or modified in accordance with its terms.

"Intercreditor Agreement" means the Intercreditor Agreement by and between the Lender and the Guaranteed Lender, as the same may be amended or modified pursuant to its terms.

"Project" means a privately-owned rental housing development to be developed by the Borrower primarily for use by military personnel and their families assigned to Robins, AFB, Warner Robins, Georgia.

"Use Agreement" means one or more Declarations of Restrictive Covenants and Use Agreements For Military Housing executed by Borrower with respect to the Project.

2. Approval of and Subordination to Guaranteed Note and Mortgage.

a. Notwithstanding the provisions of Section 16 or any other provisions of the Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Guaranteed Note and the Guaranteed Mortgage, including without limitation, the grant by the Borrower to the Guaranteed Lender of an assignment of rents and leases which is prior to the assignment of rents and leases granted by Borrower to Lender under the Instrument. Lender further acknowledges and agrees that its rights and remedies under the Note and the Instrument are subordinate and subject to the rights of the Guaranteed Lender under the Guaranteed Note and Guaranteed Mortgage in accordance with the Intercreditor Agreement.

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b. The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Guaranteed Note and the Guaranteed Mortgage, including specifically, but without limitation, to pay all sums due under the Guaranteed Note and the Guaranteed Mortgage as and when due. The Borrower further agrees that any and all defaults under the Guaranteed Note and the Guaranteed Mortgage shall constitute and be defaults under Instrument entitling the holder to exercise any and all remedies which it may have under the Instrument and/or applicable law.

3. **Payment of Indebtedness.** Section 5 is hereby amended and restated in its entirety as follows:

"5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents."

4. **Escrows For Taxes, Insurance and Other Charges.**

Notwithstanding the provisions of Section 7:

- a. So long as the Borrower is specifically required under the terms of the Guaranteed Mortgage to make payments to the holder of the Guaranteed Mortgage for the items set forth in Section 7, and provided that Lender is provided with written evidence from the holder of the Guaranteed Mortgage that such payments have been timely and fully made; and
- b. until there has been a default in the performance by the Borrower in its obligations under the Instrument and/or the Note;

the Borrower shall not be required to make the payments to Lender pursuant to Section 7. However, from and after either (i) noncompliance with any or all of the conditions set forth above at subparagraphs a and b, or (ii) the payment in full of the Guaranteed Mortgage, the Borrower shall be required upon notice of the Lender to commence making such payments in accordance with the provisions of Section 7.

5. **Books and Records; Financial Reporting.**

- a. Section 14(b) is hereby amended and restated in its entirety as follows:

"(b) Borrower shall furnish to Lender all of the following:

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- (1) within one hundred twenty (120) days after the end of each fiscal year of the Borrower, a copy of its annual financial statements prepared in accordance with generally accepted accounting principles and audited by a certified public accountant;
 - (2) within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year;
 - (3) within thirty (30) days after the end of each quarter, a statement of income and expenses for Borrower's operation of the Mortgaged Property for the preceding quarter, presented for each month during that quarter;
 - (4) after an Event of Default has occurred and is continuing, within fifteen (15) days after the end of each month, monthly income and expense statements for the Mortgaged Property;
 - (5) within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year; a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year; a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for that fiscal year;
 - (6) within thirty (30) days after the end of each quarter, and at any other time upon the request of the Lender, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any requested related information;
 - (7) within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for the Lender to access information regarding such accounts;

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- (8) within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;
 - (9) within thirty (30) days after the end of each quarter, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants, materials relating to marketing and leasing efforts for the Mortgaged Property, and any other information requested by the Lender;
 - (10) within thirty (30) days after the end of each quarter, a monthly maintenance report for the Mortgaged Property, showing the number of maintenance requests from tenants and the disposition of such requests, maintenance records and expenditures, and any other information requested by the Lender;
 - (11) within thirty (30) days of their filing with the required federal, state or local agencies, all income, real and personal property and any other tax returns and any other tax filings relating to Borrower and the Mortgaged Property;
 - (12) not less than ninety (90) day prior to the end of each calendar year, proposed operating and capital budget(s) for the Mortgaged Property for the upcoming calendar year, including estimated income, source of income and expenses, including taxes, insurance and replacement reserves, and identifying the assumptions underlying such budget(s).
 - (13) copies of any and all default or deficiency notices provided to the Borrower by the Senior Lender, any government agency, insurance company or other party promptly following Borrower's receipt of same; and
 - (14) within fifteen (15) days after receipt of a request by the Lender, such additional information, as reasonably requested by the Lender.

b. Section 14(f) is hereby amended and restated in its entirety as follows:

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"(f) Borrower and its principals (as such term has been defined by the Department of the Air Force and/or the Department of Defense for purposes of the Debt Collection Improvement Act of 1996) authorize the Lender to obtain a credit report on them at any time."

6. **Transfers of Mortgaged Property.** Notwithstanding the provisions of Section 21 or any other provision in the Instrument to the contrary, or any approval of a transfer granted by the Lender under Section 21, so long as the Mortgaged Property is subject to the Ground Lease, transfers of the Mortgaged Property or transfers of interests in the Borrower shall be governed by the terms and conditions set forth in the Use Agreement.

7. **Performance Under the Use Agreement.** The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Use Agreement. The Borrower further agrees that any and all defaults under the Use Agreement shall constitute and be defaults under the Note entitling the Lender to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

8. **Conflicts With Intercreditor Agreement.** The terms of the Intercreditor Agreement, the Note and the Security Instrument are intended to be consistent and should be so construed. However, any conflict between the terms of the Intercreditor Agreement, and the Note and the Security Instrument shall be resolved in the following descending order of precedence:

- i. The Intercreditor Agreement.
- ii. The Note and the Security Instrument.

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BORROWER:

By: _____
Name: _____
Title: _____

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APPENDIX E-3: FORM FORWARD COMMITMENT

[Letterhead of Air Force]

[Date]

[Borrower]

Re: Forward Commitment to Make Direct Loan and to Provide Base Closing, Downsizing and Deployment Loan Guaranty in Connection with Military Housing Privatization Project For Robins AFB

The undersigned acting on behalf of the Secretary of the Air Force (the "Secretary"), subject to the terms and conditions of this commitment letter (this "Commitment"), commits (i) to make the Direct Loan (as defined below) to the Borrower (as defined below) and (ii) to guarantee the Guaranteed Loan (as defined below) to be made by the Guaranteed Lender (as defined below) to the Borrower in connection with the Borrower's development and operation of the Project (as defined below).

1. **Definitions.** The terms defined in this Section 1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Commitment shall have the respective meanings specified in this Section 1.

"Borrower" means _____, a _____, or any of its successors or assigns which are approved as the owner of the Project by the Secretary prior to the Closing Date.

"Commitment Date" means the date indicated on the first page of this Commitment.

"Construction Lender" means _____ in its capacity as a lender providing financing for the rehabilitation and/or construction of the Project.

"Construction Loan" means the loan from the Construction Lender to the Borrower in principal amount of \$_____.

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"Closing Date" means the date on which the Direct Loan and the Guaranteed Loan are closed, including the execution and delivery of all documents and the satisfaction of all other conditions required under this Commitment, and funded; which Closing Date must occur by the Expiration Date indicated in Section 2.

"Direct Loan" means the subordinate loan made from the Secretary to the Borrower in the maximum original principal amount of \$_____.

"Direct Loan Documents" means the note, the security instrument and any related documents, evidencing or securing the obligations of the Borrower and Secretary with respect to the Direct Loan.

"Final Plans" means the plans, drawings, sketches, specifications, modifications and change orders prepared by the Borrower's architect, engineer or other design consultant for use in connection with the construction and development of the Project, and approved by the Secretary in accordance with the Project Documents.

"Ground Lease" means the land lease executed between the Borrower, as Lessee, and the Secretary, as Lessor, pursuant to which the Borrower has acquired a leasehold interest in the Land.

"Guaranteed Lender" means _____ and its successors and permitted assigns.

"Guaranteed Loan" means a first lien mortgage loan in the original principal amount of \$_____ from the Guaranteed Lender to the Borrower.

"Guaranteed Loan Documents" means the note, the security instrument, and any related documents, evidencing or securing the obligations of the Borrower and Guaranteed Lender with respect to the Guaranteed Loan.

"Guaranty Agreement" means the Military Housing Loan Guaranty Agreement executed between the Secretary and the Guaranteed Lender pursuant to which the Secretary has agreed to guarantee the Guaranteed Loan.

"Land" means, collectively, those tracts or parcels of land located in Warner Robins, Houston County, Georgia, more particularly described in Exhibit B.

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"Project" means a privately-owned rental housing development consisting of 670 housing units and the ancillary improvements relating to such housing units which exist or are to be constructed primarily for use by military personnel and their families assigned to Robins AFB, Warner Robins, Georgia, located or to be located on the Land, as described in and required to be designed, constructed, operated, maintained, replaced and rehabilitated in accordance with the Project Documents.

"Project Documents" means the documents issued or executed by the Borrower and the Secretary in connection with the Project, including the Solicitation, the Selected Proposal, the Ground Lease, any regulatory or use agreement, operating agreement, or other agreements.

"Selected Proposal" means the proposal prepared by or behalf of the Borrower, and selected by the Secretary as the winning proposal in response to the Solicitation, including any and all amendments. For purposes of this Commitment, Selected Proposal shall be deemed to include the Final Plans, the final construction schedule, the Construction Management Plan, the Operations and Maintenance Plan, and the Management Plan submitted by the Borrower and approved by the Secretary in accordance with the Solicitation.

"Solicitation" means United States Department of the Air Force Solicitation Number F09650-98-R-0207, including any and all amendments.

2. **Expiration of Commitment.** The Direct Loan and the Guaranteed Loan must be closed and delivered to the Secretary in accordance with the terms and conditions of this Commitment no later than _____, 199____ (the "Expiration Date"), or this Commitment shall expire and shall be without further force and effect; provided, however, that the Expiration Date shall be extended if and to the extent that the completion date for the Project is extended in accordance with the Project Documents.
3. **Scheduling the Closing Date.** Upon the request of the Borrower, the Closing Date may occur at any time prior to the Expiration Date; provided that the Borrower must notify the Secretary at least thirty (30) business days prior to the proposed Closing Date. Unless the Secretary notifies the Borrower within ten (10) business days of the Secretary's receipt of such request from the Borrower to the contrary, and provided that all of the conditions of this Commitment have then been satisfied, the Closing Date shall be the date requested by the Borrower.

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4. Agreement to Provide Direct Loan and Description of Direct Loan.

The Secretary hereby commits to make the Direct Loan to the Borrower, subject to the terms and conditions of this Commitment.

a. Material Terms of Direct Loan.

Set forth below are some of the material terms of the Direct Loan:

- (1) The maximum principal amount may not exceed \$_____; provided that in no event shall the original principal amount of the Direct Loan exceed 50% of the total permanent debt financing for the Project.
- (2) The interest rate on the principal balance outstanding under the Direct Loan shall be a fixed rate of interest as determined by the Secretary and the Borrower prior to Closing; provided that in no event shall the interest rate be less than ____%. Interest shall be calculated on the basis of a 360-day year and charged for the actual number of days in an interest period.
- (3) The Direct Loan shall have term of ____ months and an amortization period of ____ months; provided that in no event shall the term or the amortization period of the Direct Loan be more than 360 months. Monthly installments of principal and interest shall be in such amounts as to fully amortize the Direct Loan over its term. The first payment to principal (commencement of amortization) shall be the first day of the ____ month following the month of Closing.
- (4) Maturity date: _____, 1 _____
- (5) The Direct Loan may be prepaid in whole or in part without the payment of any prepayment premium or penalty on the first day of any month at any time during its term upon 60 days notice to the Secretary.
- (6) The lien of the Direct Loan shall be subordinate only to the lien of the Guaranteed Loan on the Borrower's interest in the Project and

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Borrower's personalty and subject to such other exceptions as the Secretary shall approve.

- (7) The Direct Loan shall be a permanent loan only. The proceeds of the Direct Loan may used only to repay in whole or in part the Construction Loan and to pay transaction costs of the Borrower incurred in connection with the Direct Loan as approved by the Secretary. With the agreement of the Borrower, the proceeds of the Direct Loan may be disbursed by the Secretary directly to the Construction Lender for application to the repayment of the Construction Loan. Unless otherwise agreed by the Secretary, the proceeds of the Direct Loan shall be disbursed concurrently with the disbursement of the Guaranteed Loan.
- (8) The conditions precedent to making the Direct Loan shall be the satisfaction of all conditions set forth in this Commitment and such other conditions as are reasonably required by the Secretary based on the final underwriting of the Direct Loan.

Other material terms of the Direct Loan shall be determined by the Secretary based on the final development and financing plan to be submitted by the Borrower in furtherance of the Selected Proposal and the Final Plans.

- b. **Direct Loan Documents and Closing Requirements.** The Direct Loan shall be evidenced in part by a note and security instrument (mortgage) substantially in the form attached to this Commitment as Exhibit C (or such form as otherwise prescribed or approved by the Secretary), subject only to such changes and modifications as the Secretary shall approve. Other Direct Loan Documents and closing requirements shall be specified by the Secretary and shall generally be consistent with the types of documents and requirements utilized by commercial mortgage lenders in connection with loan transactions of the type, character, and size contemplated by the Commitment (e.g., title insurance, survey, Borrower's counsel opinion, etc.). All of the foregoing documents, shall be in form and substance satisfactory to the Secretary.

5. **Agreement to Guarantee Guaranteed Loan.**

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In addition to providing the Direct Loan, the Secretary hereby commits to guarantee the Guaranteed Loan, subject to the terms and conditions of this Commitment.

a. **Material Terms of Guaranteed Loan.**

Set forth below are some of the material terms of the Guaranteed Loan, as more fully set forth in the loan commitment provided by the Guaranteed Lender to Borrower attached to this Commitment as Exhibit E (the "Guaranteed Loan Commitment"):

- (1) The Guaranteed Loan must be a first lien permanent loan having as its sole purpose to provide all or a portion of the funds necessary to repay in part the Construction Loan and to pay transaction costs of the Borrower incurred in connection with the Guaranteed Loan. The Guaranteed Loan may not be a revolving loan; amounts borrowed and repaid under the Guaranteed Loan may not be re-borrowed by the Borrower.
- (2) The maximum principal amount may not exceed \$_____; provided that in no event shall the original principal amount of the Guaranteed Loan exceed 80% of the value of the Project as determined by the Secretary pursuant to the Secretary's approval of the Selected Proposal.
- (3) The term of the Guaranteed Loan may not exceed ____ months; provided that in no event shall the term of the Guaranteed Loan exceed 360 months. The Guaranteed Loan must provide, among other things, for payments of monthly installments of principal and interest in such amounts to fully amortize the Guaranteed Loan over its term. The first payment to principal (commencement of amortization) shall be the first day of the ____ month following the month of Closing.
- (4) Maturity date: _____, 1 _____
- (5) The interest rate shall be a fixed rate of ____%. Interest shall be calculated on the basis of a 360-day year and charged for the actual number of days in an interest period.

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- (6) Optional Prepayment. **[Subject to negotiation between Borrower and Guaranteed Lender]**
- (7) The Guaranteed Loan shall be secured by a first lien on the Borrower's leasehold interest in the Project, the improvements conveyed and/or constructed on the Land, and the Borrower's personalty.
- (8) The Guaranteed Lender shall expressly approve the making of the Direct Loan and the granting of a subordinate lien by the Borrower in connection with the Direct Loan and must execute and deliver to the Secretary an intercreditor agreement which evidences such express approval, substantially in the form attached to this Commitment as Exhibit H (the "Intercreditor Agreement").
- b. **Changes in Material Terms of Guaranteed Loan.** The material terms of the Guaranteed Loan include without limitation, the term, maturity date, interest rate, monthly payment and required escrow payments. The Secretary has approved the material terms of the proposed Guaranteed Loan based on a financing plan submitted by the Borrower and the Guaranteed Loan Commitment. The material terms of the final Guaranteed Loan must not be materially different from the terms set forth in the Guaranteed Loan Commitment. Any proposed material changes in the terms of the Guaranteed Loan must be approved by the Secretary at least 30 days prior to the proposed Closing Date, but in no event less than 30 days prior to the Expiration Date. Once approved, the material terms of the Guaranteed Loan may not be amended or modified without the prior written consent of the Secretary and if any change is made in the material terms of the approved Guaranteed Loan without the Secretary's consent, the obligations of the Secretary under this Commitment shall terminate.
- c. **Guaranty Agreement.** By its acknowledgement of this Commitment, the Guaranteed Lender hereby agrees to execute and be bound by the terms of a Guaranty Agreement substantially in the form attached to this Commitment as Exhibit F.
- d. **Guaranteed Loan Documents.** The Guaranteed Loan shall be evidenced in part by a note and security instrument (mortgage) substantially in the form attached to this Commitment as Exhibit G (or such form as otherwise prescribed or approved by the Secretary), subject only to such changes and

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modifications as the Secretary shall approve. All other Guaranteed Loan Documents shall be documents customarily used by Guaranteed Lender in connection with loan transactions of the type, character, and size contemplated by the Commitment. All of the foregoing documents, and all other instruments which Guaranteed Lender shall require to close the Guaranteed Loan, shall be in form and substance satisfactory to the Secretary and shall be submitted to the Secretary at least 10 business days prior to the proposed Closing Date for the Guaranteed Loan.

6. Borrower and Borrower Application.

The Borrower has completed and submitted to the Secretary a Borrower Application. Notwithstanding anything in this Commitment or in the Solicitation to the contrary, the Secretary shall not be obligated to make the Direct Loan or to guarantee the Guaranteed Loan made to Borrower, unless and until the Borrower shall be approved for participation in such loan programs in accordance with the terms and conditions of the Borrower Application and all applicable law.

It is a condition of this Commitment that the Borrower under the Direct Loan and Guaranteed Loan must be the same person or entity as the person or entity which has been approved by the Secretary as the owner of the Project and which has executed the Project Documents. In addition, the persons or parties exercising control over the operations of the Borrower and the Project must be the same persons and/or entities as approved by the Secretary in connection with its selection of the Selected Proposal. Once approved for participation in connection with this Project, the Borrower may not be changed without the prior written approval of the Secretary; provided, however, that the Secretary shall approve changes in the Borrower and/or its principals in accordance with the terms and conditions of the Solicitation.

So long as the Borrower is the owner of the Project, the Borrower shall be and remain a single asset entity, e.g., the Borrower shall not acquire any real or personal property other than the Project, operate any business other than the management of the Project, etc.

7. Guaranteed Lender and Guaranteed Lender Application.

The proposed Guaranteed Lender has completed and submitted to the Secretary a Guaranteed Lender Application. Notwithstanding anything in this Commitment or in the Solicitation to the contrary, the Secretary shall not be obligated to guarantee

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the Guaranteed Loan, unless and until the Guaranteed Lender shall be approved for participation in the guaranteed loan program in accordance with the terms and conditions of the Guaranteed Lender Application and all applicable law. Once approved for participation in connection with this Project, the Guaranteed Lender may not be changed without the prior written approval of the Secretary.

8. **Lockbox Agreement.**

- a. At all times during the term of the Construction Loan, the Guaranteed Loan and/or the Direct Loan, the Borrower and the Project shall be subject to a Lockbox Agreement or other similar agreement in form and substance satisfactory to the Secretary which governs the receipt and disbursement of all rents, revenues and other income from the Project ("Project Income"). Among other provisions, the Lockbox Agreement shall specifically provide for the application of Project Income in the following order of priority:
 - (1) Reasonable and necessary operating expenses of the Project in accordance with an annual budget for the Project approved by the Secretary; provided that for purposes of the Lockbox Agreement operating expenses of the Project shall not include management fees paid to the Borrower or any party which is affiliated with or having an identity-of-interest with the Borrower or any of its principal.
 - (2) Extraordinary expenses of the Project as approved by the Secretary.
 - (3) Monthly deposits for taxes, insurance premiums, and reserve for replacements required to be made by the Borrower.
 - (4) Scheduled monthly payments of principal and interest due under the Construction Loan or Guaranteed Loan, as applicable.
 - (5) Deposits into the Construction Escrow Account (as defined in the Solicitation), during the applicable period in accordance with the Solicitation.
 - (6) Scheduled monthly payments of principal and interest due under the Direct Loan.

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- (7) Any payment needed to restore the balance of the Performance Deposit (as defined in the Solicitation) in accordance with the terms of the Solicitation.
 - (8) Scheduled deposits into or any payment needed to restore the balance of the Reinvestment Account (as defined in the Solicitation) in accordance with the terms of the Solicitation and the Selected Proposal.
 - (9) **[Add any other escrows or deposits required by amended Solicitation or provided for in the Selected Proposal]**
 - (10) Management fees paid to the Borrower or any party which is affiliated with or having an identity-of-interest with the Borrower of any of its principals, if applicable.
 - (11) Balance, if any, to the Borrower.

9. **Construction Loan.**

The Secretary hereby acknowledges and accepts the Construction Loan to be made by the Construction Lender to the Borrower in connection with the construction of the Project pursuant to the loan commitment provided by the Construction Lender to Borrower attached to this Commitment as Exhibit D. As a condition to Closing, the Secretary must receive evidence that the terms and conditions of the Construction Loan have been acknowledged and accepted by the Guaranteed Lender.

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10. **Special Terms and Conditions.** This Commitment is subject to the Special Terms and Conditions set forth in Exhibit A. **[Complete Exhibit A as necessary based on Selected Proposal]**
11. **Conditions Precedent to the Secretary's Obligation to Make the Direct Loan and Guarantee the Guaranteed Loan.**

In addition to the satisfaction of other conditions set forth in this Commitment or the Project Documents, the Secretary's obligation to make the Direct Loan and to guarantee the Guaranteed Loan are subject to the Secretary's determination in its sole discretion, that as of the Closing Date, the following conditions have been satisfied:

- a. There is no debt or other obligation incurred by the Borrower, in connection with the Project or otherwise, secured or unsecured by the Project, other than the Guaranteed Loan and the Direct Loan.
- b. All representations, warranties and certifications made by the Borrower and the Guaranteed Lender in connection with the Direct Loan and/or Guaranteed Loan, as applicable, must be true in all material respects, including without limitation, representations, warranties and certifications contained in the Borrower Application and Guaranteed Lender Application.
- c. The Secretary must have reviewed and approved all agreements, documents, instruments, certificates, reports, surveys, papers and other matters, which are subject to the Secretary's review and approval under this Commitment, the Direct Loan Documents, the Guaranty Agreement and/or the Project Documents, including specifically but without limitation, the sources and uses of fund statement, the commitment for the Guaranteed Loan and the Guaranteed Loan Documents.
- d. There must be no uncured defaults by the Borrower under the Construction Loan, this Commitment or the Project Documents.
- e. As reflected in a final inspection report prepared by or on behalf of the Secretary, the Borrower must have completed the Project in accordance with the Final Plans and the Project Documents (including without limitation, all amenities, landscaping, signs, and parking, and except for

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minor punchlist items for which sufficient funds have been reserved in a repair/completion escrow reserve fund as approved by the Secretary): (i) in a good and workmanlike manner; (ii) free and clear on any liens other than the lien of the Construction Loan and other liens as approved by the Secretary in connection with the Construction Loan; and (iii) in compliance with all applicable requirements of government authorities having jurisdiction over the Project, including without limitation, building codes, zoning and subdivision requirements, fire and safety requirements, environmental requirements, the Fair Housing Act and the American with Disabilities Act. In addition, the Secretary must receive a certification from an authorized representative of the Borrower, the Borrower's architect, and the Borrower's general contractor, in form and substance satisfactory to the Secretary that the Project has been completed substantially in accordance with the Final Plans and the requirements of the Project Documents.

- f. The Secretary must have received evidence of the availability of all public utilities necessary to the operation of the Project and true and correct copies of all operating licenses and permits, if any, for the Project.
- g. The Secretary must have issued or received copies (as required by the Project Documents) for all portions of the Project of an unconditional certificate of occupancy (or the equivalent) to the effect that the Project has passed all inspections and has received all approvals which are conditions precedent to the occupancy of the Project under the terms of the Project Documents and applicable law.
- h. The Guaranteed Lender and/or Borrower must have delivered to the Secretary evidence, satisfactory to the Secretary in its sole discretion, that the Borrower has (i) made all equity contributions required to be made by the Borrower and (ii) fully funded all reserves and escrow required to be funded by the Borrower under the Project Documents.
- i. The Guaranty Agreement, the Intercreditor Agreement, the Lockbox Agreement, the Guaranteed Loan Documents and Direct Loan Documents must have been executed and delivered.
- j. The Special Terms and Conditions, if any, and such other conditions as reasonably required by the Secretary based on the final underwriting of the Direct Loan and Guaranteed Loan must have been satisfied.

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12. **Notice of Default and Opportunity to Cure.** The Borrower, the Guaranteed Lender and the Construction Lender will each be provided notice by the Secretary of any defaults of which the Secretary is aware by any of such parties under this Commitment, which if not cured would give the Secretary the right to terminate this Commitment; provided, however that the failure of the Secretary to provide a copy of a default notice to any party other than the party in default (or the failure of such party to actually receive a copy of a default notice) shall not affect the validity of any such default notice. Any of the non-defaulting parties shall have the right, but not the obligation, exercisable in its sole discretion, to cure such default, and will be provided a cure period which is thirty (30) days beyond the cure period given to the party in default under the terms of this Commitment (or in those cases in which the defaulting party is not provided any cure period, the non-defaulting parties shall have a cure period of 30 days from its receipt of the default notice) in which to cure the default.
13. **Modifications and Amendments.** This Commitment supersedes any and all prior commitments, agreements, provisions, offers and statements, whether written or oral, made by the Secretary or anyone acting with its authorization. No change, amendment or modification of this Commitment shall be valid unless made in writing and signed by a duly authorized officer of the Secretary.
14. **Cancellation and Termination of Commitment by the Secretary.**
- The Secretary reserves the right to cancel this Commitment and to terminate its obligations under the Commitment at any time in any of the following circumstances.
- a. An uncured default under Section 11 of this Commitment.
 - b. The filing by or against the Borrower or Guaranteed Lender or other persons required to execute any of the Direct Loan Documents or the Guaranteed Loan Documents of: any petition in bankruptcy, trusteeship, insolvency, or reorganization; any action for the appointment of a receiver or trustee; or an assignment or arrangement for the benefit of creditors, which petition, appointment, assignment or arrangement is not withdrawn, dismissed, canceled or terminated prior to the Closing Date.
 - c. If Borrower or Guaranteed Lender's business is discontinued or suspended for any reason prior to the Closing Date.

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- d. If there have been any material misrepresentations, material errors, or the withholding of material information incident to the Construction Loan, the Guaranteed Loan or Direct Loan contemplated by this Commitment, including without limitation, any information provided in or in connection with the Borrower Application or Guaranteed Lender Application.
- e. If the Borrower or Guaranteed Lender defaults on any other obligation to the Secretary.
- f. Any transfer by Borrower of all or any part of this Commitment in violation of the terms and conditions of this Commitment.
15. **Acceptance.** One executed counterpart original of this Commitment, must be received by the undersigned no later than 5:00 pm on _____, 199____, or this Commitment shall be deemed to have lapsed and the Secretary shall have no further obligation under this Commitment.
16. **Survival.** The terms of this Commitment will survive the closing and delivery of the Direct Loan and Guaranteed Loan, except to the extent superseded by any terms of the Direct Loan Documents or Guaranty Agreement which conflict with the terms of this Commitment, in which case the terms of the Direct Loan Documents or the Guaranty Agreement, as applicable, will prevail.
17. **Loan Costs and Expenses.** The Secretary shall not pay any expense whatsoever in connection with the issuance of the Commitment or the closing of the Direct or Guaranteed Loan transaction. Borrower and/or the Guaranteed Lender shall be responsible for the payment of all costs and expenses incurred in connection with the preparation for and the closing of the Direct Loan and Guaranteed Loan, as applicable, including without limitation, all appraisal fees, recording costs, license and permit fees, legal fees, and all title insurance and other insurance premiums required in connection with the loan transaction contemplated herein.
18. **Assignment of Commitment.** The Borrower shall not have any right to assign, transfer, participate, pledge, hypothecate or encumber, all or any part of Borrower's interest in this Commitment, except that the Borrower may assign this Commitment to the Guaranteed Lender and/or Construction Lender upon the Secretary's prior written consent, subject to the terms of this Commitment.
19. **Severability.** If the Secretary chooses to waive any covenant, paragraph or provision of this Commitment, or if any covenant, paragraph or provision of this

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Commitment is construed by a court of competent jurisdiction to be invalid or unenforceable, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.

20. **Waiver by the Secretary.** The failure or delay of the Secretary to insist upon strict performance of any term, condition or requirement of this Commitment, or to exercise any right herein conferred, in any one or more instances, shall not be deemed a waiver or relinquishment of any term, condition, requirement or right that the Secretary may have and shall not be deemed a waiver of any subsequent term, condition, requirement or right.
21. **Miscellaneous**
- a. Any approval or consent of the parties required for any matter under this Commitment shall be in writing and shall not be unreasonably withheld or delayed unless expressly otherwise indicated in this Commitment.
 - b. The paragraph headings herein are for information only and in no way limit, define or modify the Borrower's, the Guaranteed Lender's or the Secretary's rights and obligations under the provisions, covenants, terms and conditions of this Commitment.
 - c. All Exhibits to this Commitment are incorporated in this Agreement by reference.
 - d. All of the agreements, terms and conditions shall be binding upon and inure to the benefit of each of the parties, their respective successors, heirs, legal representatives and permitted assigns.
 - e. Time shall be of the essence with respect to the subject of this Commitment. No waiver of any of the terms and provisions of this Commitment, and no waiver of any default or failure to comply with this Commitment, shall be effective unless made by the Secretary in writing.
 - f. Any notice required or permitted to be given shall be deemed to have been duly given when addressed and mailed by registered or certified United States mail to the Secretary at the address on the letterhead of this Commitment, to the attention of the individual signing this Commitment on behalf of the Guaranteed Lender, or to Borrower at the address to which this Commitment is addressed, or to such other place as either of the

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parties may for themselves designate in writing for the purposes of receiving notices.

- g. All personal pronouns used in this Commitment shall include the other genders whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.
- h. At the time the Secretary makes the Direct Loan and guarantees the Guaranteed Loan, neither Borrower nor Guaranteed Lender shall be in default under this Commitment or in connection with any other loan which is guaranteed by the Secretary, and no event shall have occurred which, subject to the passage of time or the giving of notice, or both, would result in such a default.

If you have any questions, please feel free to contact _____ at ()
_____.

Very truly yours,

THE SECRETARY OF THE AIR FORCE

By: _____
Name: _____
Title: _____

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Attachments

- Exhibit A. Special Terms and Conditions for Direct Loan
- Exhibit B. Description of Land
- Exhibit C. Form of Direct Loan Note and Security Instrument
- Exhibit D. Commitment for Construction Loan
- Exhibit E. Commitment for Guaranteed Loan
- Exhibit F. Form of Guaranty Agreement
- Exhibit G. Form of Guaranteed Loan Note and Security Instrument
- Exhibit H. Form of Intercreditor Agreement

The terms and conditions of this Commitment, including the attached exhibits, are hereby accepted and agreed to.

NAME OF BORROWER

By: _____
Name: _____
Title: _____

Date: _____, 199__

ACKNOWLEDGED AND AGREED TO:

NAME OF GUARANTEED LENDER

By: _____
Name: _____
Title: _____

Date: _____, 199__

NAME OF CONSTRUCTION LENDER

By: _____
Name: _____

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Title: _____

Date: _____, 199__

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EXHIBIT A

Special Terms and Conditions of Direct Loan

In addition to the terms and conditions set forth in the foregoing Commitment, the following terms and conditions shall govern the Secretary's obligation to make the Direct Loan and guarantee the Guaranteed Loan:

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EXHIBIT B

Description of Land

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EXHIBIT C

Form of Direct Loan Note and Security Instrument

[Attached]

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EXHIBIT D

Loan Commitment for Construction Loan

[Attached]

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EXHIBIT E

Loan Commitment for Guaranteed Loan

[Attached]

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EXHIBIT F

Form of Guaranty Agreement

[Attached]

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EXHIBIT G

Form of Guaranteed Loan Note and Security Instrument

[Attached]

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EXHIBIT H

Form of Intercreditor Agreement

[Attached]